

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WALTERA WILSON
Claimant

VS.

PRESBYTERIAN MANORS, INC.
Respondent,
Self-Insured

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Docket No. 258,388

ORDER

Respondent appealed the October 10, 2000 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

This is a claim for an August 15, 1999 accident and alleged injuries to the right arm, right shoulder, neck and upper back. In the October 10, 2000 Order, Judge Moore granted claimant's request for temporary total disability benefits.

Respondent contends that Judge Moore erred. Respondent argues that claimant is not entitled to receive temporary total disability benefits. In March 2000, before claimant underwent right shoulder surgery, respondent offered claimant an accommodated job, which she declined. Instead of returning to work for respondent, claimant found other employment that she felt was more appropriate in light of her injuries. After recovering from right shoulder surgery, which was performed in July 2000, claimant now has the same work restrictions and limitations that she had when she earlier declined respondent's job offer. Respondent, therefore, argues that the request for temporary total disability benefits should be denied.

Conversely, claimant contends respondent's appeal should either be dismissed or that the Order should be affirmed. Claimant argues that the Appeals Board does not have jurisdiction at this juncture of the claim to decide the temporary total disability issue now presented by respondent. In the alternative, claimant argues that she meets the definition of being temporarily and totally disabled and, therefore, is entitled to receive temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the evidence and considering the arguments, the Board concludes the temporary total disability issue raised by respondent is not reviewable at this stage of the proceedings. Therefore, this appeal should be dismissed.
2. This is an appeal from a preliminary hearing order. Therefore, not every alleged error in law or fact is subject to review. Generally, preliminary hearing awards can be reviewed only when it is alleged the Judge exceeded his or her jurisdiction in granting or denying benefits.¹ In addition, preliminary hearing findings of whether (1) the worker sustained an accidental injury, (2) the injury arose out of and in the course of employment, (3) notice was given or claim timely made, or (4) certain defenses apply, are deemed jurisdictional and subject to review from a preliminary hearing order.² The Board has held on numerous occasions that the term "certain defenses" refers to defenses which dispute the compensability of the claim under the Workers Compensation Act.
3. The issue raised in this appeal is not a jurisdictional issue listed above and does not otherwise amount to an allegation that the Judge exceeded his jurisdiction. Instead, the question presented by respondent is whether the Judge erred in applying the law to a preliminary hearing issue over which the Judge had jurisdiction.

WHEREFORE, the Appeals Board dismisses this appeal leaving the October 10, 2000 Order in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS
Kathleen N. Wohlgemuth, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1999 Supp. 44-551(b)(2)(A).

² K.S.A. 1999 Supp. 44-534a.